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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,085	07/20/2001	Kenneth B. Higgins	5113A	2412
7590 04/23/2004			EXAMINER	
Milliken & Company P.O. Box 1927 Spartanburg, SC 29304			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 04/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/910,085	Applicant(s) HIGGINS ET AL.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-51, 54, 55, 57-85, 89-100, 103-106, 109-112, 114, 119 and 122 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-51, 54, 55, 57-85, 89-100, 103-106, 109-112, 114, 119, and 122 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed February 26, 2004, has been entered. Claims 1, 3, 7, 8, 17, 20, 25, 26, 41, 50, 51, 54, 55, 58, 89-91, 93-95, 97-100, 103-106, 109, 111, 112, 114, 119, and 122 have been amended as requested. Claims 2, 52, 53, 56, 86-88, 101, 102, 107, 108, 113, 115-118, 120, 121, and 123-142 are cancelled. Thus, the pending claims are 1, 3-51, 54, 55, 57-85, 89-100, 103-106, 109-112, 114, 119, and 122.
2. Applicant's amendment is sufficient to withdraw the 112, 2nd rejection set forth in sections 3-5 of the last Office Action.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 3, 4, 7-17, 19-25, 27-42, 44-48, 50, 51, 54, 55, 57-60, 62-67, 69-73, 75-80, 89-100, 103-106, 109-112, 114, 119, and 122 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,522,857 issued to HIGGINS in view of 5,610,207 issued to DE SIMONE et al., as set forth in section 7 of the last Office Action.

Independent article claims 1, 41, 50, and 58 have been amended to recite that an upper surface of the rebond foam layer is bonded by an adhesive layer to the carpet primary backing. However, it is argued that said amendment is insufficient to overcome the rejection of the claims over Higgins in view of de Simone. Specifically, Higgins clearly teaches an adhesive layer

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between the primary backing and the foam backing layer. As such, it would have been obvious to one skilled in the art to merely substitute any of embodiments of the rebond foam layer of de Simone for the foam layer of Higgins.

In particular, the embodiment consisting of the rebond foam layer would readily be bonded to the carpet backing by way of adhesive. Additionally, the embodiment of de Simone wherein the rebond foam layer is sandwiched between two foam surfacing layers would be readily bonded by adhesive to the carpet backing. Furthermore, with respect to the embodiment wherein the carpet backing is one of the surfacing layers, it is argued that one skilled in the art would readily understand an alternative means of bonding to a carpet backing is by adhesive means. In other words, instead of forming said rebond foam onto the carpet backing, it would have been obvious to one skilled in the art to adhesively bond said rebond foam, with or without surfacing layers, to the carpet backing since it is well known in the art that forming foam layers directly onto the carpet backing and adhering self-sustaining foam backings are alternative methods of forming a carpet. Therefore, applicant's amendment is insufficient to overcome the above art rejection.

With respect to method claim 55, it is noted that the amendment does not explicitly limit the lamination method to adhesive. Thus, said claim is rejected for the reasons set forth in the last Office Action.

5. Claims 5, 6, 18, and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited HIGGINS and DE SIMONE patents as set forth above, and in further view of EP 048 986 issued to DOW, as set forth in section 8 of the last Office Action.

6. Claims 26, 49, and 81-85 stand rejected under 35 U.S.C. 103(a) as being unpatentable

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over the cited HIGGINS '857 and DE SIMONE patents as set forth above, and in further view of US 5,540,968 issued to HIGGINS, as set forth in section 9 of the last Office Action.

7. Claims 61, 68, and 74 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited HIGGINS and DE SIMONE patents as set forth above, and in further view of US 5,616,200 issued to HAMILTON, as set forth in section 10 of the last Office Action.

Response to Arguments

8. Applicant's arguments and filed on February 26, 2004, have been considered but have not been found persuasive.

9. Applicant argues that de Simone is not directed to carpet tiles or modular carpet (Amendment, page 21, 1st paragraph). This argument is unpersuasive since de Simone is not relied upon for such a teaching. Higgins clearly teaches this feature.

10. Applicant also argues that de Simone requires the presence of two exterior sandwich layers for the rebond foam (Amendment, page 21, 3rd paragraph – page 22, 2nd paragraph). The examiner respectfully disagrees. It is acknowledged that the de Simone reference teaches a carpet embodiment wherein the foam mixture is placed between a fabric carpet backing and another layer, which is preferably a foam plastic material. However, de Simone also explicitly teaches rebond foam embodiments without sandwich or surfacing layers (see working examples 17-19). When the rebond foam layer, without surfacing layers, is adhesively bonded to the Higgins carpet backing, the rebond foam surface would necessarily contact the adhesive. Additionally, it is asserted that one skilled in the art would readily understand that the rebond layer of de Simone could be used alone, used with a single surfacing layer, or used with dual

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surfacing layers (i.e., sandwiched), depending upon the desired end use and method of manufacture. Thus, applicant's arguments are found unpersuasive and the above rejection is maintained.

11. Applicant also argues that carpet tiles have different dimensional stability requirements than broadloom carpet, and as such, there is no reasonable expectation of success for using the de Simone rebond foam in a carpet tile (Amendment, page 22, 3rd paragraph). The 132 Declaration by Kilpatrick attests that one skilled in the art would not have been motivated to substitute the de Simone rebond foam for the foam of Higgins "since strength and resiliency requirements of the tile would be expected to be adversely affected even if the same foam densities were utilized" (Declaration, section 14). In response, it is first argued that applicant's arguments are not commensurate in scope with the claims. With the exception of claim 89, the present invention is not limited to a particular tensile or tear strength. Secondly, said Declaration is a subjective, opinion declaration, rather than a fact based, objective declaration. Applicant has not shown that the rebond foam of de Simone would in fact be unsatisfactory for the foam layer of the Higgins carpet.

12. With respect to the rejections based upon Higgins and De Simone in further view of Dow, Higgins '968, and Hamilton, applicant merely reiterates the traversal of the Higgins and De Simone rejection. Since said rejection has been found unpersuasive, the rejections in view of Dow, Higgins '968, and Hamilton are also maintained.

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Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

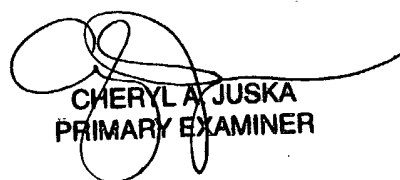
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
April 18, 2004